IN THE HIGH COURT OF UTTARAKHAND ATNAINITAL.

Writ Petition No. 2916 of 2001 (M/S)
(Old CMWP No. 6549 of 1991)

Kabul Singh, S/O Sri Padam Singh, R/O Attak Farm, Pargana Pachwa Doon, District Dehradun.

…… **Petitioner.**

Versus

1. Collector, Dehradun.
2. Additional Tehsildar, Tehsil Dehra, Dehradun.
3. Gaon Sabha, Attak Farm, Pargana, Western Doon, District Dehradun, through its Pradhan.

… **Respondents.**

Sri Arvind Vashist, learned counsel for the petitioner.
Sri Gopal Narain Srivastava , Brief Holder of the State-respondents 1 & 2.

Dated April 13, 2007.

Hon'ble B.S.Verma, J.

By means of this writ petition, the petitioner has sought for issue a writ, order or direction in the nature of certiorari to quash the orders dated 17-12-1990 and 20-1-1990 passed by the respondent nos. 1 and 2 respectively, (Annexure Nos. 6 and 5) as also the citation dated 21.2.1991. The petitioner has also prayed for a direction to the Additional Tehsildar Dehradun not to proceed with the proceedings of Case No. 188 of 1989. The petitioner has also sought for mandamus of this Court commanding the respondents not to evict the petitioner from Plot No. 683 M. Atak Farm, Pargana Pachwan, Tehsil and District Dehradun.

Relevant facts giving rise to the present writ petition are that in the year 1972, proceedings under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act read with Rule 115-C of the Rules framed under the said Act were initiated against the petitioner in respect of Plot no. 683/1 measuring 0.72 acre. The proceedings were dropped by Tehsildar vide his order dated 30-1-

1973 holding that the petitioner was not liable to be evicted. Land Management Committee vide its resolution dated 6.7.1986 allotted plot no. 683 M. measuring one acre to the petitioner and the same was approved by the S.D.O. concerned on 19-8-1986. Before the land was allotted to the petitioner, Lekhpal of the circle submitted a report for initiating proceedings under Section 122-B of the U.P.Z.A. and L.R.Act on 29-4-1986, on the basis of which a notice was issued against the petitioner and the proceedings were accordingly drawn under Section 122-B of the said Act. The petitioner raised preliminary objection that the proceedings were barred by the principle of res-judicata as the earlier proceedings dated 30-1-1973 were dropped by the Tehsildar and since the land had been allotted to the petitioner by the resolution of the Land Management Committee, the petitioner was not liable to be evicted. It is further alleged that the Additional Tehsildar without affording any opportunity of hearing to the petitioner vide his order dated 18-2-1987, ordered the eviction of the petitioner from the land in question and also awarded damages of Rs. 4,428/- against the petitioner. Being aggrieved by that order, the petitioner filed a Revision before the Collector, who vide his order dated 19-4-1989 held that the Additional Tehsildar passed the order without affording any opportunity of leading evidence as well as that of hearing to the petitioner and accordingly, he set aside the impugned order and remanded the matter to the Additional Tehsildar for decision afresh vide order dated 19-4-1989 passed by the Collector. After remand of the case, the petitioner filed an application before the Additional Tehsildar challenging the jurisdiction of the Additional Tehsildar on the ground that he had no powers of Assistant Collector therefore he could not proceed under Section 122-B. The application of the petitioner was rejected by the Officer concerned vide order dated 20-1-1990 holding that the Additional Tehsildar had jurisdiction in the matter. Aggrieved, the petitioner filed a revision before the Collector, Dehradun, which too was dismissed vide order dated 17-12-1990. It has been alleged that the Collector has passed the order in revision without affording

opportunity of hearing to the petitioner and his counsel was not heard, because the lawyers were on strike on that day, therefore, the petitioner could not know about the order dated 17-12-1990 passed in revision and he knew the fate of the revision when the recovery citation was received from the office of Tahsildar on 21.2.1991, which is impugned in this writ petition along with the order passed by the trial court.

I have heard learned counsel for the parties and perused the record.

The grievance of the petitioner is that the trial court as well as the revisional court have wrongly held that the Additional Tehsildar has jurisdiction to proceed with the proceedings under Section 122-B of the Zamindari Abolition and Land Reforms Act, therefore, the impugned orders are liable to be set aside.

From a bare perusal of the impugned order dated 20-1-1990 it is obvious that by the Order of the Board No. 7911-7974/12-3E/86 dated 29-5-1986, the Additional Tehsildar shall have the powers as being exercised by the Tehsildar and shall be competent to initiate the proceedings regarding, eviction, correction of documents and mutation etc. Therefore the contention of the petitioner that the proceedings drawn by the Additional Tehsildar are vitiated cannot be sustained. I hold that there is no illegality in the order passed by the Additional Tehsildar. The order dated 20-1-1990 was challenged by the petitioner before the Collector in revision on the ground of jurisdiction. The Collector has observed that under the Land Revenue Act both Tehsildar and Naib Tehsildar have been conferred the powers of Assistant Collector. The revision was dismissed vide order dated 17-2-1990. There is no perversity in the order passed by the learned Collector.

The learned counsel for the petitioner further urged that the issuance of citation dated 21-2-1991 is based on the order

passed by the Tehsildar dated 28-2-1987, which had already been set aside by the revisional court's order dated 19-4-1989. Hence the subsequent proceedings under Section 122-B of the said Act are barred by the principle of *res-judicata.* The matter is till pending before the trial court. The petitioner may raise plea of *res judicata* before the court concerned.

In view of the discussion above, I find that the orders under challenge do not suffer from any perversity or infirmity. The courts below have not committed any manifest error of law in passing the impugned orders. The writ petition is devoid of merit and is liable to be dismissed.

The writ petition is dismissed with no order as to costs. It is directed that the court concerned shall decide the matter on merit after hearing the petitioner, who may raise the plea of *res judicata* before the trial court. Recovery under Citation (Annexure No. 7) dated 21-2-1991 shall remain stayed till the final decision of the case under Section 122-B of the Act by the trial court.

The interim order dated 20-3-1991 is vacated.

All applications stand disposed of.

(B.S.Verma, J.)

RCP